MASS. CA1.2: M38/11

a Massachusetts consumer guide to

shopping rights

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ConsumerAffairs & BusinessRegulation

what shoppers should know.

For most of us, shopping is a necessary fact of life. By knowing some of the general laws that protect consumers, you can safeguard your rights. (Please note, unless otherwise stated these consumer protection laws apply to businesses and not to private party sales.)

Warranties: Express & Implied

A warranty is a two-part pledge to you. First, it promises that the merchandise sold is as represented. Second, it promises that you will receive repairs, a replacement, or a refund if it is not the quality or condition represented. A seller does not have to use formal words such as "warranty" or "guaranty," for a warranty to exist. There are two types of warranties: express and implied.

Express Warranty: Sellers create an express warranty when they make a promise, show a sample or model, or describe goods to you. The written warranties provided by some manufacturers are express warranties. Express warranties can be oral or written, but you should try to get all promises in writing for your protection. (M.G.L. c. 106, § 2-313 (1))

Implied Warranty Of Merchantability: Under the implied warranty of merchantability, the merchandise must do what it was designed to do with reasonable safety, efficiency and ease, and for at least a reasonable period of time. For example, a toaster must toast, a TV

set must have a picture and a clothes dryer should not overheat and catch fire when properly operated.

Every item sold by a merchant in Massachusetts automatically comes with the implied warranty of merchantability. There is no warranty of merchantability if the seller is not a merchant, or if the seller is a merchant but does not ordinarily sell goods of that kind. For example, a computer purchased from a restaurant that does not usually sell computers will not have this implied warranty.

Under this law, a merchant cannot sell merchandise "as is", "with all faults", or with a "50/50" warranty. (M.G.L. c. 106, §2-314, §2-316A)

Implied Warranty of Fitness for a Particular Purpose: If you ask a salesperson to recommend a sleeping bag for camping in sub-zero temperatures, then the recommended bag should keep you warm. If it does not, then the merchandise is not fit for its particular purpose, and the seller had failed to follow this implied warranty. The implied warranty of fitness for a particular purpose arises when all three of the following conditions are met: 1) the seller has reason to know your particular purpose for buying a product; 2) you rely on the seller's skill or judgment in selecting or providing a product to meet that purpose; 3) the seller has reason to know that you are relying on his/her skill and judgment.

Both merchants and private party sellers are bound by the implied warranty of fitness for a particular purpose. (M.G.L. c. 106, §2-315)

Breach of Warranties: Under state law, it is an unfair or deceptive act or practice to fail to honor a warranty. (M.G.L. c. 93A, §2(c), 940 CMR 3.08 (2))

Refund, Return & Cancellation Policies

Massachusetts law requires that a merchant clearly and conspicuously disclose the store's refund, return, or cancellation policy. A merchant cannot misrepresent the store's policy or fail to honor it. Generally, clear and conspicuous disclosure means that the merchant must display a written return policy that the buyer can see and understand before the purchase is made. As long as the product is not defective, a merchant can choose any return policy, provided the merchant discloses this policy to the buyer before the purchase. Stating the policy on the receipt would not satisfy this disclosure requirement, because it is not provided until after the sale. (M.G.L. c. 93A, §2(c), 940 CMR 3.13(2)).

Defective Merchandise: A store, however, cannot use its disclosed policy to refuse the return of defective merchandise. When the item purchased is defective, you can choose a repair, replacement or refund. This right is contained in the Implied Warranty of Merchantability law. Under that law, merchants cannot limit your remedies. In addition, this means that if a merchant chooses an "All Sales Final" return policy, it must disclose that policy without limiting your rights. For example, the disclosure of the return policy must be similar to a posting which reads: "All Sales Final, With the Exception of Defective Goods." (940 CMR 6.12)

Merchandise Credits: When a store issues a merchandise credit for returned goods, you have a least five years from the date of issue to redeem the credit (M.G.L. c. 93, §14S).

Gift Certificates: You have least two years from the date of purchase to redeem a gift certificate (M.G.L. c. 266, § 75C).

Truth In Advertising And Sales

Disclosure: Under state law, a merchant must tell you about any fact that may influence your decision to enter into the transaction. For example, a used car dealer would have to disclose that a vehicle was in a serious accident (940 CMR 3.16(2)).

Bait & Switch: Merchants may not use bait and switch tactics. A merchant using this tactic works to lure you into the store with an appealing advertisement for Product A. The merchant does not really intend or want to sell Product A. Instead, once you are in the store, the seller will try to pressure you into buying Product B, which usually is more expensive or more advantageous to the seller than Product A. (940 CMR 3.02 (3)) Bait & Switch tactics include:

- Refusing to show, demonstrate, or sell the advertised product in accordance with the terms of the offer;
- Discrediting the guarantee, terms, quality, etc., of the advertised product;
- Claiming there are insufficient supplies of the advertised item (unless otherwise noted in the advertisement);or
- Refusing to deliver the item within a reasonable period of time.

Out of Stock Items/ Rainchecks: A merchant must have enough of the advertised merchandise available for sale to meet reasonably expected demand. If a store is out of stock of a product, then it generally has to provide you with a "raincheck." This will allow you to buy the product for the advertised price when it is in stock again.

The store can also offer a comparable substitute for the out of stock item. However, the store does not have to provide rainchecks if the ad states that the available quantities are limited or unavailable in certain geographic areas, or if the demand was more than could reasonably have been anticipated. (940 CMR 6.06)

Advertising Errors: If an advertisement contains an error, the seller may honor the terms stated in the advertisement or promptly correct the misrepresentation using the same advertising medium. (940 CMR 6.13)

Sales: For the term "sale" to be used in an ad when the actual savings are not stated, the law requires the savings to be at least 10% for items regularly priced $200 or less, and at least 5% for more expensive items. Stores cannot have the same item on sale for more than 45% of the 6 month period following the first sale date. (940 CMR 6.05 (5) and (3))

Sale Prices: If you buy an item at the regular price and it goes on sale soon after, there is no law requiring the store to refund the difference in price. However, many stores will give you a refund out of good will.

Used Products for New: A merchant cannot represent, directly or indirectly, that a product, or any part of it, is new or unused when that is not true. Nor can s/he misrepresent the extent of the previous use. A merchant must clearly and conspicuously disclose whether the products or parts for sale are used, or contain used, rebuilt, reconditioned, or remanufactured parts. (940 CMR 3.15 (1))

Lay Away Plans: These plans allow you to pay for a product in installments, but you will not receive the merchandise until after you have paid in full. A store

must fully disclose its policy on law away plans, including cancellation and return (or non-return) of payments already made. Merchants cannot change the price of merchandise by increasing payments or by substituting lower priced merchandise. (940 CMR 3.12)

Pricing

Non-Grocery Stores: Merchants must mark merchandise with the actual selling price. They also must disclose to you the cost of services prior to an agreement. Merchants cannot misrepresent the price or claim that it is reduced or offered for a limited time only, when this is untrue. *This pricing law is enforced by the Attorney General.* (940 CMR 3.13(l)).

Food and Grocery Stores: The Massachusetts Item Pricing Law requires food and grocery stores to individually price mark most items with the actual selling price. The law also requires food and grocery merchants to sell any item at the lowest price indicated on an item, sign, or advertisement.

Certain items are exempt from this requirement, including unpackaged products, gallon and half-gallons of milk, eggs, tobacco products, greeting cards, vegetable or fruit baby food in glass jars, soft drinks, and some candy and snack food. Additionally, stores do not have to individually price mark up to 60 items located in end-aisle or free-standing displays, and stores with cash register scanners can exempt an additional 400 items of their own choosing. With over 10,000 items in any typical supermarket, these exemptions are a small fraction of the items stores carry. *This pricing law is enforced by the Division of Standards.* (M.G.L. c. 94 §184B-E)

Cooling-Off Periods

Many consumers mistakenly believe that after they purchase a product they have a "cooling-off period"-such as a 3 day period- during which they can cancel the contract. THIS IS NOT TRUE. The law only provides for "cooling-off" periods in extremely limited situations. If your contract contains a cancellation provision, it is valid. However, not all contracts have cancellation provisions. Be very careful when you are signing a contract, especially when you feel that you are being pressured!

Door-to-Door Sales: If you make a purchase at a place other than a merchant's usual place of business, Massachusetts and federal law allows you three days to cancel. This rule applies to purchases of goods or services for over $25. (M.G.L. c. 93 §48)

To cancel the contract, you must notify the seller in writing at the address given in the contract no later than midnight of the third business day after you signed the contract. You may deliver the notice or send it by regular mail or telegram. Within ten business days after receipt of your cancellation notice, the seller must return your payment. You must allow the seller to pick up the goods at your house, or if the seller requests and you agree, you may ship them at the seller's expense and risk. If the seller does not pick up the goods within 20 days of the notice of cancellation, then you may keep or dispose of them as you wish.

This cooling-off period does not apply to sales that are:

- made at the seller's regular place of business, which is generally the main office or a branch office;
- made completely by mail or phone;
- under $25;

- for real estate, insurance, or securities; or
- for **emergency** home repairs.

Canceling a Health Club Contract: You also have three business days to cancel a health club contract no matter where it was signed. (Health spas, sports clubs, weight control centers, and martial arts schools are all considered health clubs.) The health club must include a notice of your rights to cancel in the written contract. To cancel a health club contract, deliver or mail your written notice to the club within three business days of signing the contract. The club must refund your money within 15 business days of receiving your letter.(M.G.L. c. 93, §78-88)

Time Shares: Contracts for time shares must allow the purchaser a 3 day right to cancel. (M.G.L. c. 183B, §38A (14)) To cancel a time share contract, deliver, telegram, courier, or send by registered, return-receipt requested mail, a notice of cancellation to the seller no later than three business days after signing the contract. If you paid by check, a refund must be made immediately as long as the check was not yet deposited into the seller's account, otherwise it must be refunded within 7 days. If you paid by credit card, a credit must be made to your account immediately. (M.G.L. c. 183B, §41)

Credit Repair and Services Organizations: You also have a "cooling off" period for contracts with a credit services organizations. You may cancel the contract until midnight of the third business day after signing it. Your payment will be returned within 10 days of the organization receiving your cancellation notice. (M.G.L. c. 93 §68D)

mail, telephone, television or computer.

Shopping by Mail, Telephone, Television, or Computer

You may find it more convenient and enjoyable to shop for merchandise advertised by mail, telephone, television, or computer. Convenience, however, may be costly. Before ordering, take the following steps:

Be sure to read the advertisement carefully, especially the fine print. Do not rely on a picture, as it may not accurately represent the product. Note the promised delivery or shipment date. Do not forget to add sales tax and the postage and handling charges to the cost of the merchandise.

Be sure to get a street address and telephone number from the company, in case you need to contact them. If you are uncertain of the legitimacy of an offer, request written materials. Find out the merchant's return policy before you order, including who is responsible for the return postage. Keep a record of your order including disclosed policies, information about the items, the date ordered, and copies of any paperwork.

Never send cash. If you are thinking of using your credit card to purchase merchandise, find out from your card issuer what protection you will have in case of fraud. Be

extremely cautious about giving out your credit card number to an unknown company. There are companies that very persuasively solicit card numbers, charge the accounts and never deliver the merchandise.

Delivery: The Federal Trade Commission Mail Order Rule: A company must ship your order within the time period promised in its advertisements. If the company does not promise a specific time, the company must ship your order within 30 days of receiving your completed order, unless you have agreed to a delay in shipment. If you pay by charge or credit card, the time period begins on the date that the seller charges the merchandise to your account. However, if you are applying for credit to pay for your purchase (either opening a line of credit or extending existing credit), the company had 50 days after receiving your order to ship the merchandise.

If the seller does not send your order when promised, and you have not agreed to a new shipping date, then you can cancel your order and get a prompt refund. The Mail Order Rule does not apply to: photo finishing, magazine subscriptions (except for the first issue), C.O.D orders, seeds and plants, and credit orders where your account is not charged until after the goods are shipped.

This Mail Order Rule also includes sales made by telephone, computer, and fax machine.

Consumer Privacy

Massachusetts law limits the amount of information merchants can require for check cashing and credit card purchases. (M.G.L. c. 93 §105)

For credit card purchases, a merchant is not allowed to record or require personal information that is not required by the credit card company. Generally, this means they cannot require or record your address, telephone number, or social security number.

For check purposes, a merchant can ask to see a credit card but may not write down the credit card number. Merchants may only record your name, address, and driver's license or state ID card, and telephone number.

Your Massachusetts driver's license number may be your social security number. To protect your privacy and to guard against fraud, you may request the Registry of Motor Vehicles to assign you a random number.

When you provide personal information to a retailer, your name could end up on a marketing list. Some merchants compile information about their customers in order to notify them of sales. This information may come from discount cards that are scanned at the register. If you have privacy concerns, ask the merchant for a written policy about how this information will be used.

Unsolicited Merchandise

If you receive merchandise that you did not order or request, you may consider the merchandise to be an unconditional gift. You may use or dispose of it as you wish without any obligation to the sender. Although you are not legally obligated, you may wish to notify the sender that you intend to keep the merchandise as a gift. This could help avoid possible problems, such as the sender trying to bill you for the merchandise, or it could help correct an honest error. (M.G.L. c. 93, §43)

Fair Credit Billing Act

You are protected by this federal law when you use your credit card to pay for purchases.

Billing Errors: If you find an error on your credit or charge card statement, you may dispute the charge and withhold payment on the disputed amount while the credit card company investigates. A billing error may be a charge for the wrong amount, for something you did not accept, or for an item that was not delivered as agreed.

To dispute a charge and to protect your rights under this law, you must send a written billing error notice to the creditor. Your notice must reach the creditor within 60 days after the first bill containing the error was mailed to you. The notice should include your name and account number, the dollar amount of the billing error, and the reasons why you believe there is a mistake.

The creditor must acknowledge your complaint in writing within 30 days after it is received, unless the problem is resolved within that period. Within two billing cycles (but not more than 90 days), the creditor must conduct a reasonable investigation and either correct the mistake or explain why the bill is believed to be correct.

Unsatisfactory Goods or Services: You also may dispute charges for unsatisfactory goods or services purchased with a credit or charge card. To take advantage of this protection, you must have bought the item in your home state or within 100 miles of your current mailing address, and the charge must be for more than $50. These limitations do not apply if the seller is also the card issuer or if a special relationship exists between the card issuer and the seller. In all circumstances, you first must make a good faith effort to resolve the dispute with the seller.

sources of help.

For general information:
Office of Consumer Affairs
and Business Regulation
(617) 727-7780 or
Toll Free: (888) 283-3757

To file a complaint:
The Office of the Attorney General
(617) 727-8400

To file complaints about the Item Pricing Law:
Division of Standards
(617) 727-3480

To request mediation:
Contact your local consumer group listed in the phone book. You may call Consumer Affairs or the Attorney General's Office for the program that covers your area.

To report unsafe products:
U.S. Consumer Product Safety Commission
(800) 638-2772

Sales tax questions:
Massachusetts Department of Revenue
(800) 392-6089

other resources.

Consumer Guides

Banks Selling Insurance
Home Improvement
Landlords' Rights and Responsibilities
Lemon Aid Law
Managing Credit and Debt
New & Leased Car Lemon Law
Shopping Rights
Small Claims Court
Tenants' Rights and Responsibilities
30-day Demand Letter
Used Vehicle Warranty Law

Consumer Fact Sheets

Auto Repair Rights
Credit Card Secrets
Making Health Clubs Work Out for You
Stopping Junk Mail, Calls, and E-mail
Surviving Financial Identity Theft

Consumer Hotline

(617) 727-7780
Toll Free (888) 283-3757

Online Resource Center

http://www.consumer.com/consumer

e-mail

ask@consumer.com

This publication provides general information about Massachusetts consumer issues and procedures. It is not designed to address all questions in detail and consumers are encouraged to seek further guidance by contacting the agency directly.

Printed on recycled paper

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